STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION	**)**	
On Its Own Motion	**)**	
	)	**Docket No. 01-0609**
Investigation of the propriety of the rates, terms, and	**)**	
Conditions related to the provision of the Basic	**)**	
COPTS Port and the COPTS-Coin Line Port.	**)**	

REPLY BRIEF OF
ILLINOIS BELL TELEPHONE COMPANY

Illinois Bell Telephone Company ("SBC Illinois"), by its attorneys, submits this Reply Brief in the above-captioned proceeding.

INTRODUCTION

The intervenors in this proceeding—TruComm, LLC, Data Net Systems, LLC, and Payphone Services, Inc. (together "the Payphone Coalition")—have changed their theory of the case at every stage of this proceeding, and they have continued that pattern in their Brief.

First, the Payphone Coalition's Brief abandons the single issue it raised in its petition initiating this docket: whether SBC Illinois recovered, or should have recovered, the costs at issue through the retail Flex ANI tariff it filed with the FCC pursuant to its

Payphone Clarification and Waiver Order.[1] Since that was the only issue raised by the Payphone Coalition in the pleadings initiating this docket, and since that issue was the only issue designated for investigation by the Commission, the Payphone Coalition has now waived the only issue properly before the Commission.

The Payphone Coalition also claims in its Brief, for the first time in this proceeding, that the costs at issue in this proceeding were incurred not to provide an Unbundled Payphone Port offering to CLECs, but instead to address problems associated with providing Flex ANI at retail to payphone service providers ("PSPs"). That theory is not based on the testimony of any witness in the case. In fact, it is contrary to the testimony of the Payphone Coalition's own witness, Mr. Starkey. (See Starkey, P.C. Ex. 1.0 at 8). Instead, it is based on the uninformed speculation of the Payphone Coalition's attorneys, coupled with irrelevant language taken out of context from various documents. See P.C. Br. at 8-9, 17-21. However, the record does not support the new theory. In fact, the same documents relied upon by the Payphone Coalition clearly show that it is incorrect.

The Payphone Coalition asserts that SBC Illinois has already recovered the costs at issue through its basic port rates. See id. at 9-17. This argument was thoroughly debunked in SBC Illinois' Brief (at 11-15). As a result, the Payphone Coalition has now repackaged that argument, in the process abandoning the position of its own witness.

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[1] Memorandum Opinion and Order, In the Matter of the Pay Telephone Reclassification and Compensation Provisions of The Telecommunications Act of 1996, CC Dkt. 96-128, 13 FCC Rcd. 4998 (March 9, 1998) (the "Payphone Clarification and Waiver Order").

However, the Payphone Coalition's most recent spin on this argument is also wrong, for the reasons explained below.

Finally, the Payphone Coalition raises several additional arguments in its Brief, some of which it addressed in testimony and others which it did not. Those arguments also lack merit, as will be explained below.

I. THE PAYPHONE COALITION HAS WAIVED THE ONLY ARGUMENT PROPERLY BEFORE THE COMMISSION.

As SBC Illinois has pointed out, both in its testimony (Wardin, Am. Ill. Ex. 3.0 at 3-6) and in its opening Brief (at 1-2, 6-8), the scope of this proceeding was determined by the Petition of the Payphone Coalition in Docket 01-0588 and the resulting Commission Order, which initiated this docket. Order, Ill. C.C. Dkt. 01-0588, 2-3 (the "Initiating Order"); Verified Petition to Set an Interim Rate for SBC Illinois Tariff Pursuant to Section 13-801(g), Ill. C.C. Dkt. 01-0588 (Am. Ill. Ex. 3.0, Sched. WKW-3.0.2) (the "Petition"). According to the Petition of the Payphone Coalition, SBC Illinois has already recovered, or should have recovered, the costs at issue in this proceeding through the tariffs filed pursuant to the FCC's Payphone Clarification and Waiver Order. Petition at ¶¶ 11-14. As a result, the Commission granted the Payphone Coalition's Petition and entered an order initiating this docket for the purpose of investigating that issue, and only that issue. Initiating Order at 2-4.

As SBC Illinois has also argued (Br. at 10), the Commission cannot address any issues in this proceeding except for the one identified for investigation—whether the costs at issue were recovered, or should have been recovered, in the retail tariffs filed with the FCC pursuant to the Payphone Clarification and Waiver Order. To the contrary, the Commission's order in this docket must be limited to the scope of the Payphone Coalition's Petition and the Commission's own initiating order. See, e.g., Alton & So. R.R. v. Commerce Comm'n, 316 Ill. 625, 629-30 (1925); Peoples Gas Light & Coke Co. v. Commerce Comm'n, 221 Ill. App. 3d 1053, 1060 (1st Dist. 1991); Order, Ill. C.C. Dkt. 00-0700, ¶ 29 (July 10, 2002). Moreover, a party that fails to address an issue in its briefs waives that issue. Order, Z-Tel Communications, Inc. v. Illinois Bell Telephone Co., Ill. C.C. Dkt. 02-0160, 25-26 (May 8, 2002); see Ill. S. Ct. R. 341(e)(7).

There is no remaining dispute about the issue that the Commission designated for investigation in this docket. As SBC Illinois explained in its Brief (at 7-8), the Payphone Clarification and Waiver Order did not address UNE rates in any way, and that decision therefore does not support the Payphone Coalition's position. During the evidentiary hearing, the Payphone Coalition's witness, Mr. Starkey, conceded that the Payphone Clarification and Waiver Order does not address the costs and rates that are at issue here. (Starkey, Tr. 220-22).

The Payphone Coalition does not dispute any of this in its Brief. In particular, the Payphone Coalition does not dispute, and in fact does not even address, SBC Illinois' assertions that: (1) the scope of this docket is limited to the single issue identified in the

Petition and the Initiating Order—whether the costs at issue either were, or should have been, recovered through the retail tariff filed by SBC Illinois pursuant to the FCC's Payphone Clarification and Waiver Order, (2) that the scope of the Commission's order in this proceeding must therefore be limited to that issue, and (3) that, in fact, the FCC's Payphone Clarification and Waiver Order does not address the costs and rates that are at issue here.

In fact, the Payphone Coalition's brief does not address the application of the Payphone Clarification and Waiver Order. The introductory portion of the Payphone Coalition's brief asserts, in passing, that that the costs at issue in this proceeding "[s]hould have been recovered by Ameritech when it filed its federal tariffs in 1998 to recover the cost of Flex ANI." P.C. Br. at 9. However, the brief contains no corresponding argument. The Argument section of the brief never mentions this issue, nor does it mention the Payphone Clarification and Waiver Order. Id. at 9-21.

In short, the Payphone Coalition has ignored, and therefore waived, the only issue that can properly be addressed by the Commission in this proceeding. This is the only issue that the Commission should address in its order.

II. THE PAYPHONE COALITION'S NEWEST THEORY IS OBVIOUSLY INCORRECT.

As SBC Illinois has explained previously (see SBC Ill. Br. at 3-6, 8-12), the costs at issue in this proceeding were incurred by SBC Illinois to upgrade the software in its Lucent 5ESS switches, for the sole purpose of providing CLECs, specifically the members of the Payphone Coalition, with an Unbundled Payphone Port offering. The upgrade was necessary to permit Flex ANI to work properly in conjunction with the AIN-based version of shared transport that this Commission has ordered SBC Illinois to provide. The Commission ordered that form of shared transport at the urging of the CLECs. (Novack, Am. Ill. Ex. 2.0 at 4, 6-11; Novack, Am. Ill. Ex. 2.1 at 4-6; Wardin, Am. Ill. Ex. 3.0 at 7-9). The software upgrade at issue in this proceeding serves no other purpose in SBC Illinois' network, and it supports no other services. (Novack, Am. Ill. Ex. 2.0 at 9-11; Novack, Am. Ill. Ex. 2.1 at 4-5; Novack, Tr. 170-72).

In its Brief, the Payphone Coalition now argues that SBC Illinois did not upgrade its Lucent 5ESS switches to support the Unbundled Payphone Port offering, but instead to address other problems with Flex ANI. Specifically, the Payphone Coalition argues that SBC Illinois upgraded its switch software to resolve problems with certain toll-free "800" calls originating from payphones served by SBC Illinois at retail. P.C. Br. at 17-21.

Nothing in any of the witnesses' testimony supports the Payphone Coalition's position. As noted above, SBC Illinois' witnesses testified very clearly that SBC Illinois purchased the new secure features for the sole purpose of supporting the Unbundled Payphone Port offering. (See, e.g., Novack, Am. Ill. Ex. 2.0 at 9-11; Novack, Am. Ill. Ex. 2.1 at 4-5; Tr. 170-72). And Mr. Starkey, who had access to all of the same documents now relied upon by the Payphone Coalition, did not question SBC Illinois' assertion that it purchased the secure features for that purpose. To the contrary, his testimony accepted SBC Illinois' explanation of the costs of the switch upgrade and its reasons for performing the upgrade. He testified, "I don't take issue with the total investment and/or expense amount Ameritech Illinois claims will be required to provision an unbundled switch port capable of supporting flexible automatic number identification ('FLEX-ANI') required by pay telephone providers." (Starkey, P.C. Ex. 1.0 at 3). Similarly, he did not disagree with SBC Illinois' explanation that the upgrade was performed to support the Unbundled Payphone Port offering. Instead, he testified:

> Apparently, the AIN triggers Ameritech uses to support UNE-P conflict (within its Lucent switches) with the FLEX-ANI triggers needed to ensure that the proper two-digit payphone-specific ANI code is properly passed within the ANI stream. As such, Ameritech purchased, from Lucent, a software "patch" that would solve the problem. Likewise, Ameritech Illinois was required to upload this software onto the entirety of its embedded Lucent switching platform so as to ensure that FLEX-ANI capabilities continued to function properly.

(Id. at 8).

The Payphone Coalition relies on various cross-examination exhibits, in an attempt to demonstrate Flex ANI did not work properly for certain toll-free "800" calls placed from payphones. P.C. Br. at 7-8, 17-21. Those documents establish only that Lucent identified a problem involving Flex ANI and toll-free calls, and that the secure features at issue in this case were proposed by Lucent as one possible means of resolving that problem. (See, e.g., P.C. Cross Ex. 7 at 5; P.C. Cross Ex. 9 at 3; P.C. Cross Ex. 10 at 5-6). They do not show that SBC Illinois purchased the secure features to address that problem. The Payphone Coalition has simply jumped to that conclusion. (See Novack, Tr. 118-31).

There is no factual basis for the Payphone Coalition's leap of faith, as Mr. Novack repeatedly pointed out during his cross-examination. Despite constant badgering by the Payphone Coalition's attorney, Mr. Novack testified at least ten times during his cross-examination that the exhibits relied upon by the Payphone Coalition could not support the Payphone Coalition's conclusion that Secure Features 332 and 528 were purchased to address a problem with toll-free calls, rather than to support Unbundled Payphone Ports. As Mr. Novack explained, none of those documents shows what solution was actually chosen to resolve the toll-free calling problem, or even if it was resolved at all. The documents relied upon by the Payphone Coalition simply do not address those questions. Novack, Tr. 118-31.[2] Thus, after considering all of the documents relied upon by the Payphone Coalition, Mr. Novack affirmed that Secure Features 332 and 528 were purchased exclusively to support Unbundled Payphone Ports and that this is their only purpose today. (Novack, Tr. 170-72).

[2] Indeed, Payphone Cross Exhibit 9 (at 3) shows that SBC concluded that the problem with toll-free calls was considered to be "de minimis," that SBC was handling billing for such calls manually, and it had applied for a waiver regarding the affected calls. This implies that SBC may not have needed to correct the problem at all.

Indeed, the Payphone Coalition's own cross-examination exhibits show that SBC Illinois purchased Secure Features 332 and 528 for the sole purpose of supporting Unbundled Payphone Ports, just as SBC Illinois' witnesses testified.

For example, Payphone Coalition Cross Exhibit 8 consists of a string of e-mails generated while the Unbundled Payphone Port offering was being developed and Secure Features 332 and 528 were being purchased. Those e-mails clearly identify the purchase of the new secure features as being related to the Unbundled Payphone Port offering, and none of them mentions a problem with toll-free calls from payphones. The first of the e-mails, captioned "Re: FlexANI problem," clearly sets forth the nature of the inquiry: "Here's what you need for Flex ANI and\or Pay Phone comp to work with AIN [Advanced Intelligent Network] TF and AIN in general." (P.C. Cross Ex. 8 at 5). The subsequent e-mails in the series are captioned "Re: SFID and OFID Features for FlexANI in LT/ST [long-term shared transport]." One of those e-mails, dated February 27, 2001, further clarifies that Secure Features 332 and 528 were purchased to support the Unbundled Payphone Port offering. It states, "We are trying to get FlexANI to work in the Ameritech field 5ESS switches for LT/ST (<u>in preparation for when we will be offering COCOTs</u> [customer-owned coin-operated telephones] <u>with LT/ST</u>)." (<u>Id.</u> at 2-3 (emphasis added)). The references to "AIN" and "LS/ST" make clear that these e-mails are discussing the Unbundled Payphone Port offering, since the retail services that SBC Illinois provides to payphone service providers do not use the AIN platform or AIN-based shared transport. <u>See</u> Novack, Tr. 110-11.

Similarly, Payphone Coalition Cross Exhibit 11 consists of another string of e-mails concerning the purchase of Secure Features 332 and 528. The most recent of the string, captioned "Flex ANI with LTST," explains the problem as follows:

> It appears that the 5ESS requires the 4 Secure Feature IDs described below. AIT [Ameritech] already owns SFID 38 and SFID 142. The 2 new features are SFID 332 and SFID 528. When those 2 are activated, the 5ESS can turn on Optioned Features 744 and 745 so that FlexANI will work with AIN.

(P.C. Cross Ex. 11 at 1). Below that e-mail appears the same one quoted from Payphone Coalition Cross Exhibit 8, above, stating, "Here's what you need for Flex ANI and/or Pay Phone comp to work with AIN TF and AIN in general." (Id. at 2-3). As with Payphone Coalition Cross Exhibit 8, this leaves no question that the new Secure Features were purchased exclusively to support the Unbundled Payphone Port offering. And, again consistent with Payphone Coalition Cross Exhibit 8, none of the e-mails in this exhibit mentions a problem with toll-free calls at all. (Id. at 1-3).

In summary, the record clearly shows that the software upgrades at issue in this case were performed specifically to make Unbundled Payphone Ports available. The evidence includes not only SBC Illinois' testimony (Novack, Am. Ill. Ex. 2.0 at 6-11; Novack, Am. Ill. Ex. 2.1 at 4-6; Novack, Tr. 70-72), but also the Payphone Coalition's own cross-examination exhibits (P.C. Cross Ex. 8 at 2-3-, 5; P.C. Cross Ex. 11 at 1-3). Conversely, there is no affirmative evidence that the software upgrades were performed for any other reason, as the documents relied upon by the Payphone Coalition simply do not address that issue. (See Novack, Tr. 118-31, 170-72).

III. THE COSTS AT ISSUE IN THIS DOCKET ARE NOT INCLUDED IN SBC ILLINOIS' BASIC PORT RATE.

The Payphone Coalition also argues that SBC Illinois should not recover the costs of upgrading its Lucent 5ESS switches, because it already recovers all of its switch software costs in its basic unbundled port rate, which the Commission reviewed in Docket 00-0700. P.C. Br. at 9-17.

The Payphone Coalition made a facially similar, but significantly different, argument in its testimony. There, Mr. Starkey testified that the switch upgrade costs might already be recovered through SBC Illinois' existing basic port rates. (Starkey, P.C. Ex. 1.0 at 16-18, 25-26). Mr. Starkey explained that "unless SBC Illinois removes a certain software expense from its accounts before calculating either its direct investment or indirect maintenance expenses, it will undoubtedly double recover those expenses if allowed to establish a stand-alone rate additive consistent with those upgrades." (Starkey, P.C. Ex. 1.0 at 26 (emphasis added); see also id. at 16-18).

The problem with Mr. Starkey's position was that he assumed, without investigation, that the costs of new secure features had not been removed from the costs in the study. That assumption was wrong. As Dr. Currie explained, switch software expenses of the kind at issue here were removed from the switching cost study. Dr. Currie's testimony included the actual calculation of SBC Illinois' switching costs from Docket 00-0700, which specifically showed the removal of software expenses from the calculation of the switching maintenance factor. (Currie, Am. Ill. Ex. 1.1 at 8-9 & Sched.

KAC-1R). Dr. Currie's testimony and the supporting exhibit leave no room for dispute on this issue.

The Payphone Coalition does not dispute any of this in its brief. In fact, it carefully avoids addressing either Dr. Currie's or Mr. Starkey's testimony on this subject. Instead, the Payphone Coalition changes its argument. The Payphone Coalition's new spin on this issue is that SBC Illinois' basic port rate, by definition, must include all of the "features and functions" of the switch. The Payphone Coalition argues that those features and functions include the ability to combine Flex ANI with AIN-based shared transport. P.C. Br. at 9-14. The new version of the Payphone Coalition's position has many problems.

First, and most importantly, the Payphone Coalition's position is fundamentally inconsistent with this Commission's recent Phase I Interim Order in SBC Illinois' Section 271 proceeding. The Commission concluded that, whenever SBC Illinois must purchase new secure features for its switches, the costs of the new secure features may be separately recovered, through the BFR process. Interim Order, Ill. C.C. Dkt. 01-0662, ¶¶ 1062-63 (Feb. 6, 2003) (the "Phase I Interim Order"). Here, by voluntarily tariffing the Unbundled Payphone Port offering, SBC Illinois has done far more, and has taken on far more financial risk, than the Commission's decision requires. SBC Illinois pointed this out in its Brief (at 13-14). Incredibly, the Payphone Coalition never addresses the Commission's Phase I Interim Order in its Brief.

The Payphone Coalition attempts to prop up its position with a badly distorted version of the FCC's Louisiana II decision. The Payphone Coalition contends that new secure features are already present in the switch and merely needed to be switched on. Therefore, it claims, new secure features should be considered to be among the pre-existing "features, functions and capabilities" of the switch, even though SBC Illinois had not payed for those features and had no right to use them at the time of the Payphone Coalition's request. P.C. Br. at 12-14. Of course, if the Commission shared this view, it would not have decided the Phase I Interim Order as it did, since the Commission expressly relied on Louisiana II in reaching its decision. See Phase I Interim Order at ¶ 1063. In effect, the Payphone Coalition is trying to get the Commission to reconsider its Phase I Interim Order, while studiously avoiding any discussion, or even recognition, of that order in its Brief. However, even if the Payphone Coalition's tactics were procedurally proper (which they obviously are not) the Commission's current reading of Louisiana II is entirely correct.

In Louisiana II, BellSouth refused to provide CLECs with vertical features that were both loaded and active in its switches, but that BellSouth did not provide to its own retail customers. The FCC found that to be inappropriate, since the vertical features were already fully available. The FCC ruled,

> The features, functions and capabilities of the switch are the same basic capabilities that are available to the incumbent LEC's customers. Additionally, local switching includes all vertical features that the switch is capable of providing . . . .

Louisiana II at ¶ 207. As a result, the FCC concluded that BellSouth was required to provide unbundled access to any vertical feature "loaded in the software of the switch, whether or not BellSouth offers it on a retail basis." Louisiana II at ¶ 217. However, at the same time, the FCC made clear that ILECs were not required to provide any new switching capabilities. The FCC explained, "we agree with BellSouth's claim that it is not obligated to provide vertical features that are not loaded in the switch software, because this would require BellSouth to build a network of superior quality." Id. at ¶ 218. The FCC's point—fully applicable in this case—was that an ILEC must provide CLECs with existing switching capabilities, not new ones.

The Payphone Coalition seizes on the FCC's use of the phrase "loaded in the switch" and claims that Secure Features 332 and 528 are already "loaded in the switch" in this case, needing only to be activated. Therefore, the Payphone Coalition claims that Secure Features 332 and 528 must be provided at no additional cost. P.C. Br. at 12-14. The Payphone Coalition's reading of Louisiana II makes no practical, economic or policy sense. Even Mr. Starkey recognized that SBC Illinois' Lucent 5ESS switches were not capable of combining Flex ANI with AIN-based shared transport at the time of the CLECs' request. (P.C. Ex. 1.0 at 8). And even the Payphone Coalition does not contend that SBC Illinois could use the new secure features without paying for them. In effect, the Payphone Coalition is suggesting that Secure Features 332 and 528 were among the "features that the switch is capable of providing" when SBC Illinois got its first request for an Unbundled Payphone Port, even though it is uncontested that SBC Illinois had not paid for those features and therefore could not use them at that time. Under those circumstances, it is absurd to suggest that Secure Features 332 and 528 were features that the switch was "capable of providing" at the time of the CLECs' request. See Louisiana II at ¶ 207; see Phase I Interim Order at ¶¶ 1062-63.

Second, even if the Payphone Coalition's reading of Louisiana II were otherwise correct, that decision would not support its position here. The FCC's order deals with which switch features must be provided to CLECs, but it does not address the rates at which they must be provided. The Payphone Coalition claims that SBC Illinois must provide all of the "features, functions and capabilities" of the switch. P.C. Br. at 12-14. However, that point is moot here, because SBC Illinois has, without question, upgraded its Lucent 5ESS switches and made Unbundled Payphone Ports available to CLECs. Nothing in Louisiana II, nor anything else cited by the Payphone Coalition, requires that SBC Illinois do so without recovering the costs associated with the upgrade. To the contrary, the FCC specifically recognized in Louisiana II that "[a]ctivating a vertical feature loaded in the software of a switch constitutes a modification to the BOC's facility." Louisiana II at ¶ 218. The FCC further noted that, an ILEC incurs costs in making such a modification, "incumbent LECs may recover such costs from requesting carriers." Id. at n. 727 (emphasis added).

Third, the Payphone Coalition's new argument is inconsistent with the testimony of its own witness, Mr. Starkey. As noted above, Mr. Starkey recognized that, to determine the costs that are recovered through SBC Illinois' basic port rate, one must evaluate the cost study that supports that rate. Mr. Starkey argued that the basic port rate might already recover the costs at issue in this case "unless SBC Illinois removes a certain software expense from its accounts before calculating either its direct investment or indirect maintenance expenses." (Starkey, P.C. Ex. 1.0 at 26 (emphasis added); see also id. at 16-18). Of course, as discussed above, those costs were removed from the study presented in Docket 00-0700. The Payphone Coalition now abandons Mr. Starkey's position, arguing that the costs at issue in this docket are recovered in the basic port rate, even though there is no remaining dispute that those costs were affirmatively removed from the basic port rate cost study. As a result, the Payphone Coalition's new position ignores the evidence that, as Mr. Starkey testified, directly answers the question.

Fourth, the Payphone Coalition's position ignores the structure of SBC Illinois' unbundled switching rates. SBC Illinois offers thirteen different unbundled ports, with widely varying functions, costs and rates. That rate structure has never been challenged, for the simple reason that SBC Illinois, CLECs, and the Commission have always understood that different ports have different functions and costs, and that different rates are therefore appropriate for each type of port. (Currie, Am. Ill. Ex. 1.1 at 6, 8; Novack, Am. Ill. Ex. 2.1 at 2-3). In this case, the Payphone Coalition argues, in essence, that the basic port must do everything for everyone. Obviously, that is not the case, or there would be only one port offering. The Payphone Coalition never addresses this issue.

Fifth, as SBC Illinois explained in its Brief (at 15), acceptance of the Payphone Coalition's position would ultimately lead to higher port rates, not lower ones. Under the Payphone Coalition's approach, basic switch port costs would need to include any features that might possibly be requested by a CLEC, whether or not there were any current use for such features. Lucent offers literally thousands of such features. If SBC Illinois were to include those costs in its unbundled switching rates, port rates would need to be much higher to reflect the costs of the additional functionality. (Novack, Am. Ill. Ex. 2.1 at 7).[3] Once again, the Payphone Coalition does not respond to this argument.

Sixth, the Payphone Coalition chooses to ignore, rather than address, the recent arbitration award entered by the Public Utilities Commission of Ohio (the "PUCO"), in Discount Dial Tone.[4] As SBC Illinois pointed out in it Brief (at 14-15), the PUCO ruled that SBC Ohio should be allowed to recover the costs of upgrading its Lucent 5ESS switches (as well as other costs) for the purpose of providing Unbundled Payphone Ports identical to those provided in Illinois. The PUCO concluded:

> The Commission finds persuasive SBC's simple argument that these costs would be avoided if SBC did not offer unbundled payphone ports. These costs are only incurred when SBC offers unbundled payphone ports. Since SBC has no use for the software and network upgrades except to provide an unbundled payphone port, the Commission finds that DDL by requesting an Analog Coin ID Port, is the cost causer and, consequently, DDL should pay for the use of the Analog Coin ID Port.

Discount Dialtone at 7. The Payphone Coalition's failure to address this decision speaks volumes.

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[3] SBC Illinois' approach also results in economically efficient rates, because it imposes the costs associated with additional features on the CLECs that actually use those features. That approach is fully consistent with economic principles regarding cost causation and cost recovery. (Currie, Am. Ill. Ex. 2.1 at 10-11).

[4] Arbitration Award, In the Matter of the Petition of Discount Dialtone, LLC, for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with SBC Illinois Ohio, PUCO Case No. 02-1831-TP-ARB (Oct. 31, 2002) ("Discount Dialtone") (Novack, Am. Ill. Ex. 2.2 at Sched. 2.2.1).

IV. THE PAYPHONE COALITION'S OTHER ARGUMENTS LACK MERIT.

The Payphone Coalition also makes other arguments, generally in a perfunctory manner and with little or no support from the record. For the most part, these argument address only rate design issues. That is, they address how SBC Illinois should recover the costs of Secure Features 332 and 528, not whether it should recover those costs. The Payphone Coalition's rate design arguments lack merit, and they should be rejected.

For example, the Payphone Coalition argues that SBC Illinois has spread the costs of the new secure features across the wrong set of customers. First, the Payphone Coalition argues that the costs at issue should be spread more broadly, by imposing them on all CLECs (P.C. Br. at 14-15) or even on all SBC Illinois access lines (id. at 16-17). Second, taking the opposite approach, the Payphone Coalition argues that the costs should be spread more narrowly. The Payphone Coalition contends that the costs should be allocated only to CLECs serving Independent Payphone Providers ("IPPs") over "Coin Line Ports," rather than "basic ports," or by limiting the additional charges to ports in Lucent 5ESS switches. (P.C. Br. 15-17). Obviously, these arguments are completely inconsistent with each other, and they should be dismissed for that reason alone. However, they are also invalid for other reasons.

The first of these arguments is based on the assertion that Secure Features 332 and 528 "can be used" to support offerings other than Unbundled Payphone Ports. (P.C. Br. at 14). However, undisputed evidence in the record shows that the new secure features do not serve any other purpose or support any other UNEs or services. (Novack, Am. Ill. Ex. 2.0 at 9-10; Novack, Am. Ill. Ex. 2.1 at 4-5; Novack, Tr. 170-72). As Dr. Currie explained, to reflect that fact, rates were developed by spreading the costs of the new secure features over the projected number of Unbundled Payphone Ports. That rate design is economically correct, because users of those ports—and not the users of any other switch ports—are the cost causers. (Currie, Am. Ill. Ex. 1.1 at 6-7). The Payphone Coalition has never identified any other UNE or service that uses Secure Feature 332 or 528; it has only speculated that the secure feature might possibly have other uses. Of course, speculation is not evidence. Thus, as the Ohio commission correctly ruled, "These costs are only incurred when SBC offers unbundled payphone ports." Discount Dialtone at 7. The CLECs that use Unbundled Payphone Ports are the cost causers here (indeed, they are the only cost causers), and they should be required to bear the costs of the switch upgrade. Id.[5]

The Payphone Coalition's second argument also ignores the record. The Payphone Coalition speculates, without reference to anything in the record, that the new secure features support what the Payphone Coalition calls a "Coin Line Port," but not what the Payphone Coalition calls a "basic port." (P.C. Br. at 16). However, Mr. Novack made clear that SBC Illinois offers two types of unbundled offerings for serving IPPs: the Basic COPTS Line UNE-P and the COPTS Coin Line UNE-P. As Mr. Novack explained, both of those offerings employ Flex ANI in the same way, and both of those

[5] Similarly, the Payphone Coalition's assertion that the costs of the switch upgrade should be allocated to all SBC Illinois switch ports? both wholesale and retail? implicitly assumes that users of other products and services also benefit from the upgrade. (See P.C. Br. at 16-17). That assumption is wrong, for the reasons explained above.

offerings required the Lucent 5ESS switches to be upgraded. (Novack, Am. Ill. Ex. 2.0 at 3-4). Once again, the record contains no contrary evidence, and the Payphone Coalition cites none. (See P.C. Br. at 16).

Nor is there any basis for imposing all of the costs of the switch upgrades on CLECs served from Lucent 5ESS switches, as the Payphone Coalition suggests. (See P.C. Br. at 15). The Commission sets rates for services (or UNEs), not for technologies. SBC Illinois is not aware of any instance in which the Commission has ordered separate rates for the same service (or UNE), depending on the technology involved.[6] Instead, all of the costs for a service (or UNE) are generally averaged over the entire system, yielding a single rate. More importantly, the FCC's TELRIC rules require that prices be set for each UNE, not for each technology. 47 CFR §§ 51.503, 51.505, 51.507. The TELRIC rules require state commissions to set geographically deaveraged rates to account for geographic differences in costs, but nothing in the rules either requires or permits deaveraging according to technology. Id. at § 51.507(f).

The Payphone Coalition also suggests, without supporting citations of any kind, that a "terminating period" should be imposed on the recovery of the costs of the secure features. (P.C. Br. at 16). This argument is inconsistent with the forward-looking nature of UNE rates. Because UNE rates are based on forward-looking costs, not historical (or "embedded") costs (47 CRF § 51.505(d)(1)), all costs that would be incurred to provide a UNE on a forward-looking basis must be considered in setting UNE rates, regardless of

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[6] Rates set in such a manner would likely be excessively complex, because loop, switching and transport technology varies throughout the Company's network.

past costs or past cost recovery. For example, as Dr. Currie explained, SBC Illinois' unbundled loop rates are based only on the forward-looking costs of providing loops, and do not take into account the recovery of the Company's historical costs of service in the past, through its retail rates. (Currie, Am. Ill. Ex. 1.1 at 3). The same is true here. The costs of Secure Features 332 and 528 will remain part of the forward-looking costs of providing Unbundled Payphone Ports in the future, and therefore remain a part of the rate calculation.

Finally, SBC Illinois notes that Mr. Starkey's testimony did not discuss any of the Payphone Coalition's rate design proposals. (See generally Starkey, P.C. Ex. 1.0). If there were any merit to the Payphone Coalition's proposals, one would expect Mr. Starkey to have supported them.

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CONCLUSION

THEREFORE, for the reasons provided above, and in SBC Illinois' Brief and testimony, the Commission should approve the rates proposed by SBC Illinois for the Unbundled Payphone Ports.

Respectfully submitted,

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